

Classic Two-Party Superfund State Contract (SSC) Model Clauses

(Consistent with SSC Generator - SSCG - Version 1.0)

August 1990

These model clauses are generic contract clauses designed to be consistent with the structure and content of 40 CFR Part 35, Subpart O, 40 CFR Part 31, and 40 CFR Part 300 (the NCP).

These model clauses can be used as the basis for the generation of a draft Superfund State Contract. Site-specific information must be added to the content of these clauses, and the sufficiency of these clauses must be determined by both the State and the Regional parties to the Contract.

For further programmatic information, comments, suggestions, or SSCG reference, contact Marsha Lindsey (FTS 382-2448).

**Superfund State Involvement Section
U.S. Environmental Protection Agency**

CLASSIC TWO-PARTY SUPERFUND STATE CONTRACT MODEL CLAUSES

Version 1.0, August 1990

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CLASSIC TWO-PARTY SUPERFUND STATE CONTRACT
MODEL CLAUSES

Version 1.0, August 1990

This document is for draft use only. The sufficiency of these clauses must be determined on a site-specific basis by both the State and Region.

1(M). GENERAL AUTHORITY

[REFERENCES: 40 CFR 300.515(a) & 300.180(d), and 40 CFR 35.6800(a) & 35.6805(a)]

This Contract is entered into pursuant to §§ 104(a)(1), (c)(2), and (c)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq., as amended; the National Oil and Hazardous Substances Pollution Contingency Plan, 55 F.R. 8666 et seq. (40 CFR Part 300, March 8, 1990, hereinafter referred to as the "NCP"); other applicable Federal regulations including 40 CFR Part 35, Subpart O, and 40 CFR Part 31. [NOTE: cite State law/authority applicable to response.]

2(M). PURPOSE OF THIS SUPERFUND STATE CONTRACT (SSC)

[REFERENCES: 40 CFR 35.6805(b) & 35.6805(1), and 40 CFR 300.510(a) & 300.180(a)]

This Contract is an agreement between the United States Environmental Protection Agency (EPA) and the [name of State agency entering into this Contract pursuant to 40 CFR 300.180]. The Governor has designated the [State agency] to interact with EPA on behalf of the State of [_____] (the "State"), concerning response actions. In order to conduct remedial action at [name of Site and NPL Site number] (the "Site"). This Contract documents the responsibilities of the lead Agency (EPA) and the support Agency (State) during the remedial action and includes clauses that outline the basic purpose, scope, and administration of the Contract, as well as those activities described in the attached Statement of Work (SOW), Appendix [____]. The purpose of this SSC is two-fold. First, this SSC obtains the necessary CERCLA assurances (pursuant to §§ 104(c)(3), 104(c)(9), and 104(j) of CERCLA, as amended); these assurances have been separated into clauses and placed consistent with their content. However, the CERCLA assurance clauses are clearly marked as such in their titles. Second, this SSC documents State involvement in the remedial action cleanup process, pursuant to § 121(f) of CERCLA, as amended, and § 300.515(g) of the NCP.

Subject to EPA & State Review

(M) - Mandatory Clause; (O) - Optional Clause

[_____] are directions and/or must be filled in

3(M). DURATION OF THIS CONTRACT

This Contract shall become effective upon execution by EPA and the State, and shall remain in effect, with the exception of the CERCLA operation and maintenance assurance, until the activities described in the SOW are technically complete and/or the final reconciliation of remedial action costs for the [CHOOSE Scope of Inspection] (Site) (operable units) have been satisfied [See Reconciliation Provision section, below], whichever is longer. [Specify specific time frames, as necessary.] EPA and the State may agree to extend, by amendment [See Amendability section, below], the duration of this Contract when remedial action for the project takes longer, or more time is needed for closeout or reconciliation.

4(M). DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

[REFERENCES: 40 CFR 35.6805(h), and 40 CFR 300.120(e) & 300.180(a)]

A. EPA has designated:

[name of Remedial Project Manager]
[address]
[telephone number]

to serve as Remedial Project Manager (RPM) for this Contract. The designated RPM may be changed by letter to the State signatories, and incorporated by reference herein without amending this Contract.

B. The State has designated:

[name of State Project Manager]
[address]
[telephone number]

to serve as the State Project Manager (SPM) for this Contract. The designated SPM may be changed by letter to the Federal (EPA) signatories, and incorporated by reference herein without amending this Contract.

C. The RPM and the SPM may make project changes that do not substantially alter the scope of the response actions at the [CHOOSE Scope of Inspection] (Site) (operable units) or the cost of the remedial action.

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[] are directions and/or must be filled in

D. Any disagreements between the RPM and SPM shall be resolved through their chains of command and/or signatories to this Contract, as specified under the Issue Resolution section, below.

5(M). NEGATION OF AGENCY RELATIONSHIP

[REFERENCE: 40 CFR 35.6805(c)]

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract, and the State (including its employees, agents, and contractors) is not authorized to represent or act on behalf of EPA in any matter relating to this Contract.

6(M). SITE DESCRIPTION

[REFERENCES: 40 CFR 35.6805(d) & 35.6105(a)(2)(i), and 40 CFR 300.430(b) & 300.430(d)]

A description of the [CHOOSE Scope of Inspection] (Site) (operable units) -- including its location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at the [CHOOSE Scope of Inspection] (Site) (operable units) by EPA, the State, or others, and the response action at the [CHOOSE Scope of Inspection] (Site) (operable units) contemplated in the Record of Decision(s) (ROD) -- is attached in Appendix [__].

7. SITE ACCESS

A(M). Site Access

[REFERENCES: 40 CFR 35.6805(p), and 40 CFR 300.400(d)]

The State shall use its own authority to secure access to the Site and adjacent properties, as well as the rights-of-way and easements necessary for EPA or its contractors to complete the remedial actions undertaken pursuant to this Contract. EPA may also secure access under its own authority, and may request assistance from the State as necessary. As requested by EPA, the State shall

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(M) - Mandatory Clause; (O) - Optional Clause

[_____] are directions and/or must be filled in

also obtain or assist EPA in obtaining any permits that are necessary to satisfactorily complete the activities described in the SOW.

B(O). State Access

Representatives of the State shall have access to the Site to review work in progress and shall comply with the site safety plan. When possible, representatives of the State shall coordinate visits to the Site in advance with the RPM. Likewise, when possible, the RPM will coordinate visits to the Site in advance with representatives of the State.

C(O). EPA Liability Waiver

EPA shall not be responsible for any harm to any State representative or other person arising out of, or resulting from, any act or omission by the State in the course of an on-site visit.

D(O). State Liability Waiver

The State shall not be responsible for any harm to any EPA representative or other person arising out of or resulting from any act or omission by EPA in the course of an on-site visit.

8. THIRD PARTY

[REFERENCE: 40 CFR 35.6805(r)]

A(M). Exclusion of Third-Party Benefits

This Contract benefits only the State and EPA. It extends no benefit or right to any third party not a signatory to this Contract.

B(O). Liability

EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

Subject to EPA & State Review

(M) = Mandatory Clause; (O) = Optional Clause

[] are directions and/or must be filled in

9(M). SITE-SPECIFIC STATEMENT OF WORK (SOW)

[REFERENCES: 40 CFR 35.6805(e) & 35.6105(a)(2)(ii), and 40 CFR 300.435(b) & 300.430(f)]

A site-specific Statement of Work (SOW), indicating the tasks to be performed for this response action, including estimated costs, is attached in Appendix [__].

10(M). PROJECT SCHEDULE

[REFERENCE: 40 CFR 35.6805(g)]

A general description of the project schedule/milestones -- either by calendar year or Federal Fiscal quarter -- includes a project summary of deliverables, as specified in the SOW, and is attached as Appendix [__]. This project schedule [CHOOSE] (may) (may not) be adjusted by the joint authority of the RPM and the SPM, without a formal amendment, unless there is an extended delay to the schedule. Changes that significantly increase the project costs, or alter the scope of work, thereby affecting the State's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate an amendment to this Contract [see Amendability section, below].

11(M). STATE REVIEW

[REFERENCES: 40 CFR 35.6805(t), and 40 CFR 300.505(a) & 300.505(d)]

[LANGUAGE TO BE COMPOSED BY SIGNATORIES: EPA and the State shall specify a binding time frame for review and comments on matters relating to the implementation of the response action pursuant to this SSC, or incorporate, by reference, SMOA consultation requirements. Note that SMOA consultation requirements are NOT legally binding, as prescribed by the NCP, but can only be altered or modified through a Cooperative Agreement or SSC.]

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(M) - Mandatory Clause; (O) - Optional Clause

[_____] are directions and/or must be filled in

12(O). TECHNICAL AND PROGRESS REPORTS

[REFERENCE: 40 CFR 35.6815(c)(1) & 35.6650]

A. Progress Reports

EPA agrees to submit progress reports [*specify schedule*] to the SPM. These progress reports shall include an explanation of work accomplished during the reporting period, delays and problems encountered, along with a description of anticipated corrective measures and resolutions. EPA shall also provide a comparison of the percentage of the project completed to the percentage indicated in the project schedule, detailing significant discrepancies.

B. Technical Reports

EPA agrees to submit technical reports [*specify schedule*] to the SPM. Technical reports may be supplied in draft, and finalized during the remedial action process, detailing technical progress of the project, changes in the execution of the remedial action, and other information as specified herein.

[Specify all technical and progress reports to be submitted. The RPM and the SPM will negotiate a schedule for submittal of all such reports, which may be prepared in conjunction with contractors' support at the Site.]

13(O). RECORDS ACCESS

[REFERENCES: 40 CFR 35.6710, 40 CFR 300.515(h)(3), and 40 CFR 31.42(e) & 31.36(i)(10)]

At EPA's request and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the Site. At the State's request and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning the Site. The recipient of any records must comply with the requirements regarding records access described in 40 CFR 31.42(e). The recipient of any records must also require its contractor(s) to comply with the requirements regarding records access described in 40 CFR 31.36(i)(10). EPA shall not disclose information submitted by the State under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of its intent to release that information. Absent notice of such claim, and with the exception of certain policy, deliberative, and enforcement documents which may be held

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(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

confidential, EPA may make said information available to the public without further notice.

14(M). RECORDS RETENTION

[REFERENCES: 40 CFR 35.6705 & 35.6815(d), 40 CFR 31.42, 40 CFR 300.515(i), and 36 CFR Part 1230]

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be maintained for a minimum of ten years following the submission of the final Financial Status Report by EPA. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microform copying must be performed in accordance with the technical regulations and records management procedures contained in 36 CFR Part 1230 and EPA Order 2160, respectively.

15(M). A STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE

[REFERENCES: 40 CFR 35.6805(f), and 40 CFR 300.430(f)(5)(ii)(B)]

In addition to the requirements specified in CERCLA and the NCP, all applicable program requirements (policy and guidance) identified in the Administrative Record or stated here shall be adhered to. [Optional inclusion of document titles and directive numbers.]

Document Title

Directive #

[EXAMPLE:

Notification of Out-of-State
Shipments of Superfund Site
Wastes

9330.2-07]

Subject to EPA & State Review

(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

16(M). LIST OF SITE-SPECIFIC AGREEMENTS

[REFERENCE: 40 CFR 35.6805(m)]

The following list includes all site-specific agreements (CAs, SSCs, consent agreements, and administrative orders) associated with and/or in effect for the Site:

<u>Type of Agreement</u>	<u>Signatories</u>	<u>Date</u>
[EXAMPLE: CA for State Support Agency Responsibilities in RA	EPA and State	8/8/88]

17(M). CERCLA ASSURANCE: COST SHARE

[REFERENCES: 40 CFR 35.6105(b)(2), 35.6120(2) & 35.6805(i)(5), and 40 CFR 300.510(b), and § 104(c)(3) of CERCLA, as amended]

§§ 104(c)(3) and 104(d)(1) of CERCLA, as amended, require that EPA determine whether the Site was publicly or privately operated at the time of the release, in order to determine the State's cost share. This Site was [CHOOSE] (publicly) (privately) operated; therefore, the State's cost share is [CHOOSE] (10) (50) percent.

18(M). COST-SHARE CONDITIONS

[REFERENCE: 40 CFR 35.6805(j)]

A. Cost Estimate

The estimated cost of the remedial action (excluding EPA's indirect costs) is [\$__]. This estimate is derived from the [CHOOSE source] (costs itemized in the SOW) (ROD) (design specifications) and includes contingencies for change orders, which may or may not be invoked, and construction management services.

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(M) - Mandatory Clause; (O) - Optional Clause

[_____] are directions and/or must be filled in

B. Payment Terms

[REFERENCES: 40 CFR 35.6815(a) & 35.6240-35.6255]

[*CHOOSE one for i; ii & iii are required regardless*]

i. The State shall submit to EPA, prior to RA, [*specify date*], an upfront lump-sum payment for the State's share, [*CHOOSE*] (10) (50) percent, of the remedial action costs cited above. Subsequent costs for operational and functional (O&F) [*CHOOSE*] (will be negotiated separately) (are included in this payment). [see Remedy Shakedown section, below.] The State assures its cost-share obligation for actual remedial action costs at the [*CHOOSE Scope of Inspection*] (Site) (operable units), which shall be settled at reconciliation [see Reconciliation Provision section, below].

[OR]

i. The State will make incremental payments of [*\$__*], including operational and functional (O&F) [see Remedy Shakedown section, below], totaling [*CHOOSE*] (10) (50) percent of the remedial action costs at the [*CHOOSE Scope of Inspection*] (Site) (operable units) cited above, during the course of the project at [*specify interval*], and ending before the technical completion of the project, [*specify end of payments*]. The State assures its cost-share obligation for actual remedial action costs at the [*CHOOSE Scope of Inspection*] (Site) (operable units), which shall be settled at reconciliation [see Reconciliation Provision section, below].

[*ii & iii are required*]

ii. Costs incurred by the Support Agency (State) to off-set the cost-share requirements must be verified and documented in a Support Agency Cooperative Agreement (SACA) and identified in this Contract. An in-kind match is a prohibited form of payment in an SSC. Payment terms may only be adjusted through an amendment to this Contract, as specified in the Amendability section, below.

iii. All State payments shall be made payable to EPA and sent to the Regional Financial Management Office as specified below:

United States Environmental Protection Agency
Financial Management Office
[*Specify Regional Lockbox Address*]

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(M) - Mandatory Clause; (O) - Optional Clause

[*_____*] are directions and/or must be filled in

C. State Credit

[REFERENCE: 40 CFR 35.6285(c) & 35.6285(f), and 40 CFR 300.510(b)(2), 300.510(b)(3) & 300.510(b)(4)]

i. CERCLA credit may be applied to offset the State's cost-share requirements in this Contract. The State [CHOOSE] (declares) (does not declare) credit for costs incurred at the Site. [Include the following, as appropriate:] Credits are limited to site-specific expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds that have not been previously applied or reimbursed. [CAVEAT: States may not transfer remaining credits from another site, unless EPA gives prior, written approval. Call EPA Headquarters -- Superfund State Involvement Section -- for assistance.]

ii. The State declares that it has a CERCLA credit of [\$__] for costs incurred at this Site, satisfying [cite applicable requirements in 40 CFR 35.6285(c)(1)]. Technical and financial documentation to support this credit declaration may be examined to verify the credit, pursuant to 40 CFR 35.6285(c)(2)(i). This documentation is available for inspection at [specify State location]. In the event that verification reveals less than [\$__] in available credit, then the State shall pay the difference and document such in this Contract. Excess credit will not be reimbursed, but with EPA approval, excess credit may be applied to another site.

iii. [If the State has incurred costs pursuant to a Cooperative Agreement or Superfund State Contract for either remedial planning activities before 1984, or advance match prior to October 17, 1986, pursuant to 40 CFR 35.6285(f), then include these costs in this section to off-set State's cost-share requirement, and enumerate such agreements under List of Site-Specific Agreements section, above.]

iv. The State [CHOOSE] (has) (has not) entered into a Cooperative Agreement before incurring costs at the Site. [If a CA was entered into prior to costs incurred, then include the following:] EPA has authorized the State to incur costs for the remedial action expenditures after the Site is listed on the NPL and after October 17, 1986, to obtain credit, which is accepted at face value, until verified by audit and technical review of the activities undertaken at the [CHOOSE Scope of Inspection] (Site) (operable units). [Reference CA/SSC in List of Site-Specific Agreements section, above.]

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[_____] are directions and/or must be filled in

19(O). EMERGENCY RESPONSE ACTIVITIES

[REFERENCE: 40 CFR 300.415 & 300.525]

Any emergency response activities, or emergency circumstances, shall not be restricted by the terms of this Contract, including removal, per NCP. However, remedial response activities may be suspended until the emergency activities are concluded, in which case, the response activities, cost share, or terms may be subject to amendment.

20(M). CERCLA ASSURANCE: 20-YEAR WASTE CAPACITY ASSURANCE

[REFERENCES: 40 CFR 300.510(e), and 40 CFR 35.6120 & 35.6105(b)(3)]

The State has submitted its Waste Capacity Assurance Plan to EPA. EPA deemed this Waste Capacity Assurance Plan adequate, pursuant to 40 CFR 35.6120, on [Provide Date]. The State hereby assures the availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this Contract, pursuant to CERCLA § 104(c)(9).

21(M). CERCLA ASSURANCE: OFF-SITE STORAGE, TREATMENT, OR DISPOSAL

[REFERENCES: 40 CFR 300.510(d), and 40 CFR 35.6805(i)(3) & 35.6105(b)(4)]

Pursuant to §§ 104(c)(3)(B) and 121(d)(3) of CERCLA, as amended, EPA and the State have determined that off-site treatment, storage, or disposal of hazardous substances [CHOOSE] (is) (is not) required for this response action. [*If required, include to end of paragraph.*] EPA or its representative, in its invitation for bids for remedial action, shall require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that, at a minimum, meet(s) the requirements of Subtitle C of the Solid Waste Disposal Act. The State's acceptance of EPA's selection shall constitute this assurance.

22(M). NOTIFICATION OF TRANSFERS OF CERCLA WASTE

[REFERENCES: 40 CFR 35.6805(v) & 35.6120, and OSWER Directive 9330.2-07]

EPA or the State must provide written notification prior to the off-site shipment of waste from the Site to an out-of-State waste management facility, to:

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(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

A. The appropriate State environmental official for the State in which the waste management facility is located; and/or

B. The appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located.

23(M). CERCLA ASSURANCE: REAL PROPERTY ACQUISITION

[REFERENCES: 40 CFR 300.510(f), 40 CFR 35.6805(i)(4), 35.6105(b)(5) & 35.6400, and § 104(j) of CERCLA, as amended]

Pursuant to the ROD, an interest in real property [*CHOOSE*] (must) (must not) be acquired in order to implement the remedial action.

[*IF acquisition required, CHOOSE one for A, then B*]

A. EPA shall acquire the interest in real property. Therefore, consistent with § 104(j) of CERCLA, as amended, the State will accept the transfer of such interest on or before completion of the remedial action.

[OR]

A. The State is acquiring the necessary interest in real property, pursuant to a Cooperative Agreement [*include CA in List of Site-Specific Agreements section, above*] and § 35.6105(b)(5) of 40 CFR Part 35, Subpart O.

[*B is required, if real property acquisition is required, regardless of A chosen*]

B. The State also ensures the transference, with title or deed, of institutional controls restricting the use of the real property, even if the State intends to transfer this interest to a third party. [*The State must describe the institutional controls necessary as part of acquisition, or transfer of the operation and maintenance (O&M).*]

24(O). PREFINAL INSPECTION

[REFERENCE: OSWER Directive 9355.0-4A]

A. A prefinal inspection will be conducted upon preliminary project completion for this EPA-lead remedial action at the [*CHOOSE Scope of Inspection*] (Site) (operable units). The prefinal inspection will be led by the RPM. Participants,

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(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

to accompany the RPM, include the SPM and *[list other participants, as appropriate]*.

B. The prefinal inspection will consist of a walk-through inspection of the entire project site. This inspection will survey the completed site work, determining whether the project is complete and consistent with the contract documents and the EPA approved remedy. Jointly, EPA and the State will determine if there are any outstanding construction items. An attempt shall be made to determine resolutions for all remaining issues.

C. The Contractor(s) shall have certified that the equipment has performed to meet the purpose and intent of the design specifications. Retesting shall have been successfully completed where deficiencies were revealed. Determination of remedy effectiveness for remedial actions may be addressed on a case-by-case basis *[describe herein]*.

D. A prefinal inspection report will be provided by EPA to the State for review. Acceptance of the resolutions specified in the prefinal inspection report is constituted by the State's signature.

25. REMEDY SHAKEDOWN

A(M). Operational and Functional

[REFERENCES: 40 CFR 300.435(f)]

[CHOOSE one of the following paragraphs for O&F:]

Since the State has not elected to take the lead after construction is complete, pursuant to a CA, EPA will conduct, per this Contract, those activities necessary to ensure that the remedy is operational and functional for a period up to one year *[specify]*, or until the remedy is determined to be functioning properly and performing as designed, whichever is earlier. An extension of this time period may be obtained by amendment to this Contract, with prior EPA approval. The same State cost share, *[CHOOSE]* (10) (50) percent, shall be applicable.

[OR]

After construction is complete, the State will conduct, per a Cooperative Agreement, those activities necessary to ensure that the remedy is operational and functional for a period up to one year *[Specify]*, or until the remedy is determined to be functioning properly and performing as designed, whichever is

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earlier. An extension of this time period may be obtained by amendment to that Cooperative Agreement, with prior EPA approval. The same State cost share, [CHOOSE] (10) (50) percent, shall be applicable.

B(O). Ground and Surface Water Mitigation

[REFERENCES: 40 CFR 300.435(f), and § 104(c)(6) of CERCLA, as amended]

i. Pursuant to § 104(c)(6) of CERCLA, as amended, EPA is authorized to cost share in the restoration of ground or surface water for a period of up to ten years or until the level of protectiveness, as defined in the ROD is achieved. As specified in the Remedial Design, there is a plan for restoring the ground or surface water to this [Specify] level of protectiveness. Source control maintenance measures and ground- or surface-water measures, initiated for the primary purpose of providing a drinking water supply, are not considered measurable to restore ground or surface water.

[CHOOSE one for ii; iii is required regardless]

ii. The State has agreed to undertake the lead for restoration activities. EPA will share [CHOOSE] (50) (90) percent of the cost of these restoration activities, through a Cooperative Agreement (CA) [see Cost-Share Conditions section, above].

[OR]

ii. Since the State has elected not to take the lead for ground or surface water mitigation, EPA shall conduct such mitigation. The State assures its obligation to cost share, [CHOOSE] (50) (10) percent of the cost of ground and surface water mitigation [see Cost-Share Conditions section, above].

[iii is required]

iii. The ten-year clock, for this period, will adhere to the statutory provisions provided in §§ 300.435(f)(3) and 300.435(f)(4) of 40 CFR Part 300, the NCP.

Subject to EPA & State Review

(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

26(M). CERCLA ASSURANCE: OPERATION AND MAINTENANCE

[REFERENCES: 40 CFR 35.6805(i)(1) & 35.6105(b)(1), § 104(c)(3)(A) of CERCLA, as amended, and 40 CFR 300.435(f) & 300.510(c)]

The State hereby assures that the operation and maintenance (O&M) of implemented CERCLA-funded remedial actions, provided under this Contract, will remain in effect for the expected life of such actions. The State guarantees that, if the designated agent, [name State Agency or designee], conducting O&M on behalf of the State, defaults, the State will be held accountable for all O&M activities, pursuant to § 104(c)(3)(A) of CERCLA, as amended. In addition, the State assures that institutional controls, considered part of O&M, will be monitored and retained, as part of O&M.

27(M). JOINT INSPECTION OF THE REMEDY

[REFERENCES: 40 CFR 35.6805(q), 40 CFR 300.510(c)(2), 300.515(g) & 300.435(f), and OSWER Directive 9355.0-4A]

A. Final Inspection

A final inspection will be conducted upon completion of any outstanding construction items for this EPA-lead remedial action at the [Choose Scope of the Inspection] (Site) (operable units). The final inspection will be led by the RPM. Participants, to accompany the RPM, include the SPM and all other parties from the prefinal inspection.

B. Final Certification

The final inspection will consist of a walk-through inspection of the project site, with the inspection focusing on the outstanding construction items identified in the prefinal inspection. The RPM and the SPM will confirm that all outstanding items have been resolved. If any items are still unresolved, the inspection shall be considered a prefinal inspection requiring another prefinal inspection report.

C. Remedial Action Report

Upon satisfactory completion of the final inspection, EPA will provide to the State a copy of the remedial action report for the [CHOOSE Scope of Inspection] (Site) (operable units).

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(M) - Mandatory Clause; (O) - Optional Clause

[] are directions and/or must be filled in

D. Acceptance of the Remedy

The remedial action report will be reviewed by the State and EPA. The RPM will coordinate, with the SPM, the State's acceptance that the remedy is complete and performing adequately. Then the EPA Regional Administrator shall provide written notice to the State of EPA's acceptance of the completed project.

E. Project Closeout

EPA, in consultation with the State, will determine that Fund-financed response actions described in the SOW have been completed. Enforcement actions and other necessary activities, such as NPL deletion, may proceed independent of project closeout.

28(M). NPL DELETION

[REFERENCE: 40 CFR 300.515(c)(3) & 300.425(e), and OSWER Directive 9320.2-3A]

EPA shall consult and provide the State with [*describe satisfaction criteria; e.g. deletion package*] before deleting the Site from the National Priorities List (NPL).

29(M). RESPONSIBLE PARTY ACTIVITIES

[REFERENCE: 40 CFR 35.6805(u)]

If at any time during the period of this Contract a responsible party comes forward to perform any work covered by this Contract, this agreement will be amended or terminated.

30(M). ENFORCEMENT

[REFERENCE: 40 CFR 35.6805(n)]

This Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under §§ 106 or 107 of CERCLA, or any other statutory provision or common law.

[*The State may provide their own claims here.*]

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31(O). ENFORCEMENT, LITIGATION, AND COST RECOVERY

[REFERENCE: 40 CFR 300.520]

A. EPA and the State may be entitled to assert claims against a third party (herein referred to as the "potentially responsible party (PRP)," whether one or more parties) for reimbursement of any services, materials, monies or other thing of value expended by EPA or the State for Fund-financed response activity, related to the remedial action described in the SOW, at the [CHOOSE Scope of Inspection] (Site) (operable units).

i. EPA and the State hereby agree that they shall cooperate in and coordinate efforts to recover their respective costs of response actions taken at the Site, including the negotiation of settlement and the filing and management of any judicial actions against PRPs. EPA and the State also hereby agree that neither shall enter into a settlement with or initiate a judicial or administrative proceeding against a PRP for the recovery of such sums, except after having given notice in writing, to the other party to this Contract, [Specify #] days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings.

ii. Neither party to this Contract shall attempt to negotiate for, or collect, reimbursement of any SSC-specific response costs, related to the remedial action at the [CHOOSE Scope of Inspection] (Site) (operable units) described in the SOW, on behalf of the other party, and authority to do so is hereby expressly negated and denied.

iii. If either EPA or the State recovers these monies from PRPs, these funds shall reduce the total Fund-financed expenditures for remedial action that require cost share. This reduction in the cost share amount does not alter the cost share percentages defined above. Any cost recoveries for the [CHOOSE Scope of Inspection] (Site) (operable units) shall necessitate an amendment to this Contract [see Amendability section, below].

B. The State understands that EPA cannot waive its right to recover all CERCLA-funded expenditures, including those for this Site.

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32(O). ISSUE RESOLUTION

[REFERENCES: OSWER Directive 9375.5-04, and EPA/OARM Audit Report 2750 -- Management of EPA Audit Reports and Followup Actions (1984 Edition)]

In the event technical difficulties arise at the Site, or questions are raised about any terms in this Contract, the RPM and the SPM will seek resolution in a higher chain of command. Note that matters unrelated to this SSC, such as those between the State and other Federal agencies, are not subject to the terms of this Contract, since the SSC is a bilateral agreement.

A. Any disagreements arising under this Contract shall be resolved to the extent possible by the RPM and the SPM.

B. If any such disagreement cannot be resolved by the RPM and the SPM, it shall be referred, as necessary, to the Regional Superfund Director [or designee], the Regional EPA Administrator [or designee], and finally, matters of national significance and matters without legal precedent, are referred to the Assistant Administrator, OSWER, U.S. EPA [or designee], for a final resolution. Both parties, EPA and the State, agree that the final decisions achieved resulting from this process shall be binding.

C. Contractual resolutions and final audit determinations, impacting this CERCLA-funded remedial action, shall be binding to both EPA and the State, and may require an amendment to this SSC [see Amendability section, below].

33(M). SANCTIONS FOR FAILURE TO COMPLY WITH TERMS OF THIS SSC

[REFERENCE: 40 CFR 35.6805(o)]

After all administrative remedies have been exhausted, if the State fails to comply with the terms of this Contract, any CERCLA assurance, and/or the negotiated payment terms, EPA shall proceed under the provisions of § 104(d)(2) of CERCLA and shall seek to enforce this Contract, in the appropriate court of competent jurisdiction. If EPA breaches this Contract, the State may file suit and seek remedies in the appropriate court of competent jurisdiction.

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34(M). AMENDABILITY

[REFERENCE: 40 CFR 35.6805(1), 40 CFR 300.510, and § 104 of CERCLA, as amended]

This Contract may be amended for reasons including, but not limited to, the revision of costs or terms to undertake modifications to the remedial activities. Formal amendments are required when alterations to CERCLA-funded activities are necessary, or when alterations impact the State's assurances pursuant to the NCP and CERCLA, as amended. Such amendments must include a SOW for the amendment, as described in the Site-specific SOW section, above. Any change(s) in this SSC must be agreed to, in writing, by the signatories, except as provided in this Contract, and must be reflected in all response agreements affected by the change(s).

35(O). TERMINATION OF THIS CONTRACT

A. Termination may occur for cause, conclusion, or failure to comply. The parties may enter into a written termination agreement, which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs, and the amount and date of any sums due either party. Such reconciliation costs will include all project costs incurred, as well as any close-out costs.

B. If, at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, then this Contract will be modified or terminated as appropriate to allow these actions. Upon modification or termination, the parties to this agreement shall be relieved from further duties to perform those actions undertaken by persons or entities not party to this Contract.

36(M). RECONCILIATION PROVISION

[REFERENCE: 40 CFR 35.6805(k)]

This Contract shall remain in effect until the financial settlement of project costs and final reconciliation of response costs (including change orders, claims, overpayments, reimbursements, etc.) have been completed. Pursuant to 40 CFR 35.6805(k), EPA and the State have satisfied their cost-share payments of the [CHOOSE] (90/10) (50/50) split supra as specified above. EPA will not use overpayments by the State to satisfy obligations at another site. In the event

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that the payment terms above do not cover the cost of the remedial action, EPA will bill the State for the State cost share. Final reconciliation of all remedial action costs, by EPA, shall follow the acceptance of the remedy by both EPA and the State and is not contingent upon deletion of the Site from the NPL.

37(M). CONCLUSION OF THE SSC

[REFERENCE: 40 CFR 35.6820]

The SSC is concluded when:

A. Response activities at the [*CHOOSE Scope of Inspection*] (Site) (operable units) have been satisfactorily completed and payments have been made, as specified under the Cost Share Conditions section of this Contract;

B. The Financial Management Officer (FMO) has a final accounting of all project costs, including change orders and contractor claims, pursuant to Reconciliation Provision above; and

C. All State cost-share payments have been submitted to EPA [see 40 CFR 35.6805(i)(5)], responsibility for O&M has been undertaken, and, if applicable, interest in real property has been accepted, pursuant to 40 CFR 35.6805(i)(4).

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APPENDICES & AMENDMENTS

[List all references, cited in this SSC]

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In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[INSERT Name]
EPA Regional Administrator/Waste Management Division Director

Date _____

STATE OF [_____]

[INSERT Name]
State Department of Environmental Management

Date _____

[INSERT Name]
State Attorney General [If necessary]

Date _____

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[_____] are directions and/or must be filled in